

Calendar No. 413

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-215

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS AUTHORIZATION ACT

JUNE 12, 1998.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[To accompany S. 2038]

The Committee on Environment and Public Works, to which was referred the bill (S. 2038) to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, to further define the criteria for capital repair and operation and maintenance, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

GENERAL STATEMENT

This legislation provides for the reauthorization of funding for the John F. Kennedy Center for the Performing Arts, and makes certain clarifications to existing law. The levels provided in this 5-year authorization are intended to allow the Center's Board of Trustees to continue the restoration and maintenance of the Center as outlined in the comprehensive building needs plan developed under the John F. Kennedy Center Act Amendments of 1994 (P.L. 103-279).

BACKGROUND

The 1958 National Cultural Center Act signed by President Eisenhower established a cultural center as an independently administered bureau of the Smithsonian Institution. In 1964, after President Kennedy's death, Congress renamed the Center in honor of the late president, and the John F. Kennedy Center for the Per-

forming Arts opened in 1971 as a national presidential monument and living memorial.

The Kennedy Center was opened to the public in September 1971. After an overwhelming public response, the Board of Trustees of the Kennedy Center requested help from Congress in maintaining and operating the Center for the benefit of the millions of visitors. In response, Congress in 1972 authorized the National Park Service to provide maintenance, security, and other services necessary to maintain the facility. Over the next 2 decades (fiscal years 1972–1994), the Park Service received a total of \$103 million in Federal appropriations earmarked for the maintenance and operation of this Presidential monument.

The popularity of the Center has not waned in the years since its opening, with 4.5 million visitors now hosted by the Center each year. Such intensive public use has not been without consequence, however: by the early part of this decade, it had become clear that the facility—which had not seen comprehensive capital repair since its opening—had deteriorated significantly due to both usage and age. Those repairs that had taken place such as the 1977 repair of the leaking roof were undertaken in an ad-hoc manner, in response to imminent and threatening conditions. The Board of Trustees, with the support of Congress and the Administration, therefore set out to develop a more effective long-term approach to management of the facility, with one entity responsible for both the care of the physical plant and the staging of performance activities.

This approach was codified in the John F. Kennedy Center Act Amendments (P.L. 103–279) approved by Congress and signed by the President in the summer of 1994. To consolidate physical plant and performance duties in one entity, the Act transferred all capital repair, operations, and maintenance responsibilities for the Center from the Park Service to the Board of Trustees. Accordingly, Section 7 of the legislation authorized for each of fiscal years 1995–1999 annual funding of \$12 million for maintenance and \$9 million for capital repair, with a prohibition on the use of appropriated funds for performance-related activities. To date, Congress has provided to the Board of Trustees an average appropriation of \$10.7 million per year for operations and maintenance and \$9 million per year for capital projects.

Section 4(a)(1)(F) of the 1994 Amendments also directed the Board of Trustees to develop, and update annually, a comprehensive, multi-year plan for the restoration and ongoing maintenance of the Kennedy Center. Consequently, the Board of Trustees in 1995 delivered a Comprehensive Building Plan, which set forth a 15-year, two-stage program for the remediation of substandard building conditions, as well as for future continuous maintenance. Since then, the Board of Trustees has provided Congress with annual updates of the Plan.

The Plan's first phase (fiscal years 1995–1998) has concluded successfully. During Phase I, several major projects were completed. These include the installation of a new energy-efficient heating and cooling system, the replacement of the leaking roof and roof terrace, and the major renovation of the Concert Hall (resulting in full accessibility for patrons with disabilities, improved egress for all patrons, and employment of new fire safety systems).

The total appropriations allocated during this time for the Phase I capital work was \$36.0 million. For operations and maintenance—including utility and security costs, and general preventive maintenance—a total of \$42.9 million was provided.

Phase II of the Plan is scheduled to take place over the next 11 years (fiscal years 1999–2009). This stage will involve the massive “Center Block” project, during which the Opera House will be overhauled, new mezzanines and galleries will be installed in the Hall of Nations and the Hall of States, and visitor services and accompanying support facilities will be relocated and reconstructed. In addition, there will be major projects to make improvements to the plaza, improve accessibility to the theaters, install fire and other safety technology, and make a host of other repairs designed to ensure that the facility meets life safety standards. Finally, the backlog of minor repairs now estimated at \$9.5 million is scheduled to be eliminated, thus allowing for future “steady state” operation and maintenance of the facility. Over this 11-year period, Phase II capital costs are estimated at \$171 million, and operations and maintenance costs at \$173 million.

The 1994 Amendments provided for a 5-year authorization of federal appropriations between fiscal years 1995–1999. However, in light of the schedule of the Phase II work, and the need for increased operations and maintenance funding, Congressional reauthorization prior to the expiration of the current authorization is necessary.

Toward that end, on February 23, 1998, the President of the Kennedy Center transmitted to the authorizing committees of Congress draft legislation to reauthorize and revise the Federal appropriations levels for the Kennedy Center through fiscal year 2009. On May 6, 1998, Environment and Public Works Committee Chairman Chafee, joined by Ranking Member Baucus and Subcommittee on Transportation and Infrastructure Chairman Warner, introduced the Administration proposal (S. 2038) by request. The bill was considered by the full committee on May 21, amended, and reported favorably.

As amended, S. 2038 provides the necessary Congressional authorization for the Board of Trustees to continue the ongoing restoration and maintenance work envisioned for the Phase II time period. Specifically, the legislation authorizes funding for fiscal years 1999–2003. Additionally, the bill makes technical corrections to the underlying statute, and deletes an audit requirement that no longer serves a useful purpose. A section-by-section analysis follows.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the short title of the bill shall be the “John F. Kennedy Center for the Performing Arts Authorization Act.”

Section 2. Capital Repair Duties

This section amends and updates Section 4(a)(1)(G) (pertaining to capital repair duties) of the John F. Kennedy Center Act to clar-

ify such responsibilities to ensure that the functionality of the building is maintained at current standards of life, safety, security, and accessibility. The language also eliminates the reference added by the 1994 Amendments to the building site as it was in existence on July 21, 1994, thus allowing the Board of Trustees to make capital repairs to the site features that subsequently have changed.

Section 3. Operation and Maintenance Duties

This section amends and updates Section 4(a)(1)(H)(ii) (pertaining to operations and maintenance duties) of the John F. Kennedy Center Act to eliminate the reference to the building site as it was in existence on July 21, 1994, thereby allowing the Board of Trustees to carry out operations and maintenance for site features that subsequently have changed.

Section 4. Audit Requirement

This section deletes the existing requirement that the General Accounting Office (GAO) conduct an audit of the Kennedy Center's accounts every 3 years. This audit requirement is unnecessary and duplicative, as the Board of Trustees already conducts an annual audit under current law. GAO has requested that Congress relieve it of this duty (see GAO Report GAO/GGD-97-161, August 1997).

S. 2038 as introduced contained no provision relating to the audit requirement. During committee consideration, the chairman offered a substitute amendment that added this section to the bill. The amendment was adopted by unanimous consent.

Section 5. Authorization of Appropriations

This section establishes new and increasing authorization levels for operations and maintenance and capital repair, in line with the work foreseen in the Comprehensive Building Plan. Operations and maintenance funding levels are authorized at \$13 million for fiscal year 1999; \$14 million for each of fiscal years 2000 and 2001; and \$14.5 million for fiscal year 2002. The gradual increase in the authorization for maintenance funds is intended to address increases in costs for security, housekeeping, and utility costs, and also to eliminate minor repair backlog.

With regard to capital projects, front-loaded but declining authorization levels are provided to carry out Phase II work in a manner that provides maximum economy while staying within the Plan's projected \$171 million total Phase II costs. Funding for capital projects is authorized at \$20 million for each of fiscal years 1999, 2000, and 2001; \$19 million for fiscal year 2002; and \$17 million for fiscal year 2003.

S. 2038 as introduced provided for an authorization period of 11 years. The chairman's substitute amendment offered during committee consideration reduced the authorization period from 11 years to 5 years. A 5-year authorization allows the Board of Trustees to move forward with Phase II work, while ensuring appropriate committee oversight and progress review. The amendment was adopted by unanimous consent.

HEARINGS

No hearings were held on S. 2038.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report.

On May 21, 1998, the committee met to consider S. 2038. The chairman offered an amendment in the nature of a substitute, which was adopted by unanimous consent. The committee then approved S. 2038, as amended, by voice vote. No rollcall votes occurred on the bill.

REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report of the committee's estimate of the regulatory impact of the bill as reported. S. 2038, as reported, is expected to impose no regulatory impact. This bill will not affect the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 2038, as reported, imposes no Federal intergovernmental mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of a reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2038, the John F. Kennedy Center for the Performing Arts Authorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti, who can be reached at 226-2820.

Sincerely,

JUNE E. O'NEILL,
Director.

 CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2038, John F. Kennedy Center for the Performing Arts Authorization Act

Summary: S. 2038 would provide additional authorizations in the amount of \$146 million for capital projects, operations, and maintenance at the John F. Kennedy Center for the Performing Arts for fiscal years 1999 through 2003. Because S. 2038 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 2038 contains no intergovernmental or private sector-mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 2038 is shown in the following table.

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

By fiscal year, in millions of dollars						
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Authorizations Under Current Law:						
Authorization Levels	20	21	0	0	0	0
Estimated Outlays	18	20	9	4	3	10
Proposed Changes:						
Authorization Levels	—	12	34	34	34	32
Estimated Outlays	—	4	19	26	30	33
Authorizations Under S. 2038:						
Authorization Levels	20	33	34	34	34	32
Estimated Outlays	18	24	29	30	33	34

Basis of Estimate: S. 2038 would amend the John F. Kennedy Center Act to reauthorize appropriations for the John F. Kennedy Center. The bill would authorize spending on maintenance, repair, and security at \$13 million for 1999, \$14 million for each of fiscal years 2000 and 2001, and \$15 million for each of fiscal years 2002 and 2003. Capital projects would be authorized at \$20 million annually for fiscal years 1999–2001, \$19 million for fiscal year 2002, and \$17 million for fiscal year 2003. Currently these function are authorized through fiscal year 1999 maintenance, repair and security at \$12 million and capital projects at \$9 million. Thus, enactment of S. 2038 would result in a net increase in authorizations of \$12 million for fiscal year 1999 and \$146 million over the 1999–2003 period. Assuming that the amounts authorized are appropriated and that spending follows historical outlay patterns, S. 2038 would result in increased outlays of \$112 million during fiscal years 1999–2003.

Pay-As-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact: S. 2038 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

Previous CBO Estimate: On May 6, 1998, CBO prepared an estimate for H.R. 3504, the John F. Kennedy Center for the Performing Arts Authorization Act of 1998. The estimates of spending under H.R. 3504 and S. 2038 are identical.

Estimate Prepared by: Federal Cost: Christina Hawley Sadoti (226–2820); Impact on State, Local, and Tribal Governments: Marc Nicole (225–3220); Impact on the Private Sector: Jean Wooster (226–2940).

Estimate Approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: existing law as proposed to be omitted is enclosed in [bold brackets]; new matter proposed to be added to existing law is printed in *italic*; and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE—TITLE 20—EDUCATION

CHAPTER 3—SMITHSONIAN INSTITUTION, NATIONAL MUSEUMS AND ART

SUBCHAPTER V—JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

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§ 76j. Duties of Board

(a) PROGRAMS, ACTIVITIES, AND GOALS—

(1) IN GENERAL.—The Board shall—

(A) present classical and contemporary music, opera, drama, dance, and other performing arts from the United States and other countries;

(B) promote and maintain the John F. Kennedy Center for the Performing Arts as the National Center for the Performing Arts—

(i) by developing and maintaining a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults, and educators designed specifically to foster an appreciation and understanding of the performing arts;

(ii) by developing and maintaining a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and

(iii) by conducting joint initiatives with the national education and outreach programs of the Very Special Arts, an entity affiliated with the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development, and implementation of model programs and projects in the arts for disabled individuals;

(C) strive to ensure that the education and outreach programs and policies of the John F. Kennedy Center for the Performing Arts meet the highest level of excellence and reflect the cultural diversity of the United States;

(D) provide facilities for other civic activities at the John F. Kennedy Center for the Performing Arts;

(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President;

(F) develop, and update annually, a comprehensive building needs plan for the features of the John F. Kennedy Center for the Performing Arts in existence on July 21, 1994;

[(G) with respect to each feature of the building and site of the John F. Kennedy Center for the Performing Arts that is in existence on July 21, 1994 (including a theater, the garage, the plaza, or a building walkway), plan, design, and construct each capital repair, replacement, improvement, rehabilitation, alteration, or modification necessary for the feature; and]

(G) with respect to the building and site of the John F. Kennedy Center for the Performing Arts, plan, design, and construct each capital repair, replacement, improvement, rehabilitation, alteration, or modification necessary to maintain the functionality of the building and site at current standards of life, safety, security, and accessibility; and

(H) provide—

(i) information and interpretation; and

[(ii) with respect to each feature of the building and site of the John F. Kennedy Center for the Performing Arts that is in existence on July 21, 1994 (including a theater, the garage, the plaza, or a building walkway), all necessary maintenance, repair, and alteration of, and all janitorial, security, and other services and equipment necessary for the operation of, the feature, in a manner consistent with requirements for high quality operations.]

(ii) with respect to the building and site of the John F. Kennedy Center for the Performing Arts, all necessary maintenance, repair, and alteration of, and all janitorial, security, and other services and equipment necessary for the operations of, the building and site, in a manner consistent with requirements for high quality operations.

(2) ADMINISTRATIVE POWERS AND DUTIES—

(A) AUTHORITY TO ENTER INTO CONTRACTS—

The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or other private persons in order to carry out the functions of the Board under this subchapter. The authority described in the preceding sentence includes utilizing the services and facilities of other agencies, including the Department

of the Interior, the General Services Administration, and the Smithsonian Institution.

(B) PREPARATION OF BUDGET—.The Board shall prepare a budget pursuant to sections 1104, 1105(a), and 1513(b) of title 31.

(C) USE OF AGENCY PERSONNEL—.The Board may utilize or employ the services of the personnel of any agency or instrumentality of the Federal Government or the District of Columbia, with the consent of the agency or the instrumentality concerned, on a reimbursable basis, and utilize voluntary and uncompensated personnel.

(D) SELECTION OF CONTRACTORS—.In carrying out the duties of the Board under this subchapter, the Board may negotiate any contract for an environmental system for, a protection system for, or a repair to, maintenance of, or restoration of the John F. Kennedy Center for the Performing Arts with selected contractors and award the contract on the basis of contractor qualifications as well as price.

(E) MAINTENANCE OF HALLS—.The Board shall maintain the Hall of Nations, the Hall of States, and the Grand Foyer of the John F. Kennedy Center for the Performing Arts in a manner that is suitable to a national performing arts center that is operated as a Presidential memorial and in a manner consistent with other national Presidential memorials.

(F) MAINTENANCE OF GROUNDS—.The Board shall manage and operate the grounds of the John F. Kennedy Center for the Performing Arts in a manner consistent with National Park Service regulations and agreements in effect on July 21, 1994.

No change in the management and operation of the grounds may be made without the express approval of Congress and of the Secretary of the Interior.

(b) RESTRICTION ON ADDITIONAL MEMORIALS—

(1) Except as provided in paragraph (2) of this subsection, the Board shall assure that after December 2, 1983, no additional memorials or plaques in the nature of memorials shall be designated or installed in the public areas of the John F. Kennedy Center for the Performing Arts.

(2) Paragraph (1) of this subsection shall not apply to—

(A) any plaque acknowledging a gift from a foreign country;

(B) any plaque on a theater chair or a theater box acknowledging the gift of such chair or box; and

(C) any inscription on the marble walls in the north or south galleries, the Hall of States, or the Hall of Nations acknowledging a major contribution; which plaque or inscription is permitted under policies of the Board in effect on December 2, 1983.

(3) For purposes of this subsection, testimonials and benefit performances shall not be construed to be memorials.

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§ 76l. Official seal, Board vacancies and quorum, trustee powers and obligations, reports, support services, and review and audit

(a) ADOPTION OF SEAL; BOARD FUNCTION NOTWITHSTANDING VACANCIES; QUORUM.—The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations, as it deems necessary for the administration of its functions under this subchapter, including, among other matters, bylaws, rules, and regulations relating to the administration of its trust funds and the organization and procedure of the Board. The Board may function notwithstanding vacancies and twelve members of the Board shall constitute a quorum for the transaction of business.

(b) POWERS AND OBLIGATIONS OF BOARD IN RESPECT OF TRUST FUNDS.—The Board shall have all the usual powers and obligations of a trustee in respect of all trust funds administered by it.

(c) ANNUAL REPORT OF OPERATIONS AND FINANCES.—The Board shall submit to the Smithsonian Institution and to Congress an annual report of the operations of the Board under this subchapter, including a detailed statement of all public and private moneys received and disbursed by it.

[(d) AUDIT OF ACCOUNTS.—Not less than once every 3 years, the Comptroller General shall review and audit the accounts of the John F. Kennedy Center for the Performing Arts for the purpose of examining expenditures of funds appropriated under the authority provided by this subchapter.]

[(e)](d) INSPECTOR GENERAL.—The functions of the Board funded by funds appropriated pursuant to section 76r of this title shall be subject to the requirements for a Federal entity under the Inspector General Act of 1978 (5 U.S.C. App.). The Inspector General of the Smithsonian Institution is authorized to carry out the requirements of such Act on behalf of the Board, on a reimbursable basis when requested by the Board.

[(f)](e) PROPERTY AND PERSONNEL COMPENSATION—

(1) IN GENERAL.—The Board may procure insurance against any loss in connection with the property of the Board and other assets administered by the Board. Each employee and volunteer of the Board shall be considered to be a civil employee of the United States (within the meaning of the term “employee” as defined in section 8101(1) of title 5), except that the Board shall continue to provide benefits with respect to any disability or death resulting from a personal injury to a nonappropriated fund employee of the Board sustained while in the performance of the duties of the employee for the Board pursuant to the workers compensation statute of the jurisdiction in which the John F. Kennedy Center for the Performing Arts is located. The disability or death benefits referred to in the preceding sentence, whether under the workers compensation statute referred to in the preceding sentence or under chapter 81 of title 5, shall continue to be the exclusive liability of the Board and the United States with respect to all employees and volunteers of the Board.

(2) FEDERAL TORT CLAIMS.—For the purposes of chapter 171 of title 28, an employee of the Board shall be considered

to be an “employee of the government” and the Board shall be considered to be a “Federal agency”. No employee of the Board may bring suit against the United States or the Board under the Federal tort claims procedure of chapter 171 of title 28 for disability or death resulting from personal injury sustained while in the performance of the duties of the employee for the Board.

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§ 76r. Authorization of appropriations

[(a) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 76j(a)(1)(H) of this title \$12,000,000 for each of fiscal years 1995 through 1999.]

(a) *MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 4(a)(1)(H) \$13,000,000 for fiscal year 1999, \$14,000,000 for each of fiscal years 2000 and 2001, \$15,000,000 for each of fiscal years 2002 and 2003, \$16,000,000 for each of fiscal years 2004 and 2005, \$17,000,000 for each of fiscal years 2006 and 2007, and \$18,000,000 for each of fiscal years 2008 and 2009.*

[(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 76j(a)(1) of this title \$9,000,000 for each of fiscal years 1995 through 1999.]

(b) *CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 4(a)(1) \$20,000,000 for each of fiscal years 1999, 2000, and 2001, \$19,000,000 for fiscal year 2002, \$17,000,000 for fiscal year 2003, \$16,000,000 for fiscal year 2004, \$13,000,000 for fiscal year 2005, \$13,000,000 for fiscal year 2006, \$12,000,000 for fiscal year 2007, \$11,000,000 for fiscal year 2008, and \$10,000,000 for fiscal year 2009.*

(c) **LIMITATION ON USE OF FUNDS**—No funds appropriated pursuant to this section may be used for any direct expense incurred in the production of a performing arts attraction, for personnel who are involved in performing arts administration (including any supply or equipment used by the personnel), or for production, staging, public relations, marketing, fundraising, ticket sales, or education. Funds appropriated directly to the Board shall not affect nor diminish other Federal funds sought for any performing arts function and may be used to reimburse the Board for that portion of costs that are Federal costs reasonably allocated to building services and theater maintenance and repair.